IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 26977 of 2006(J)

PETITIONER:

H. ZUHARABI,
W/O.LATE DR.ISMAIL H. SALIM,
SALIM HOUSE, OPP.KUNHIPPALLY,
AZHIYOOR DESOM, P.O. CHEMBALA,
KOZHIKODE DISTRICT.

BY ADV. DR.K.B.MOHAMEDKUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS:

1.THE AZHIYUR GRAMA PANCHAYATH,
AZHIYUR P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, REPRESENTED BY ITS
SECRETARY.

2.THE STATE OF KERALA, REPRESENTED
BY SECRETARY TO GOVERNMENT (L) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

3.THE COMMISSIONER OF LAND REVENUE
THIRUVANANTHAPURAM.

4.THE DISTRICT COLLECTOR,
COLLECTORATE, KOZHIKODE.

5.THE REVENUE DIVISIONAL OFFICER,
KOZHIKODE.

6.THE TAHSILDAR, TALUK OFFICE,
VADAKARA, KOZHIKODE DISTRICT.

7.THE VILLAGE OFFICER,
VILLAGE OFFICE, AZHIYUR, CALICUT.

R1 BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA
R2 TO R5 BY ADDL.A.G.MR.VENGANOOR CHANDRASEKHARAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.26977 of 2006

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Dated: 3rd April, 2007

JUDGMENT

Ext.P23 order issued by the Government allowing a revision petition filed by the 1st respondent-Panchayat against Ext.P21 order of the Land Revenue Commissioner is under challenge. The petitioner is the widow of Dr.Ismail H.Salim who owned 2.88 acres of land in Azhiyur Amsom, Chembal Desom of Vatakara Taluk by virtue of sale deed Nos. 54/1966 and 55/1966 of the Sub Registry, Azhiyur. The case of Dr.Salim, the petitioner's husband was that along with the property covered by two sale documents, he was in possession and occupation of one acre and 45 cents of land in R.S.No.28/1 which was puramboke as per revenue records. Under the impugned order the Government directs resumption of one acre out of the aforesaid puramboke land and permits assignment of 45 cents together with portions of the residential building put up therein by Dr.Salim to the petitioner on realisation of market value considering the fact that Dr.Salim and after him the petitioner have been in long possession of such portion for their residential purpose. The 2nd respondent is the State, the third respondent is the Land Revenue Commissioner and the 4th respondent is the District Collector. Respondents 5 to 7 respectively are the R.D.O., the Tahsildar and the concerned Village

Officer. Exts.P2 and P3 are copies of the sale deeds under which the petitioner and her husband came to have ownership over a total extent of 2.88 acresl in R.S.No.27/2 of Azhiyur village. Ext.P1 is copy of document No.1042l of 1962 of S.R.O.Azhiyur which is subsidiary document to Exts.P2 and P3.

2. The claim of the petitioner is that the property covered by Exts.P2 and P3 along with the property having extent of one acre and 45 cents in R.S.No.27/2 was being enjoyed by the petitioner's husband and the petitioner as a single holding and that they put up their house by name 'Salim House' upon the same. While so on the basis of an allegation that one acre and 45 cents of land comprised in R.S.No.28/1 under the actual possession and enjoyment of the petitioner's husband and the petitioner was in puramboke, the 4th respondent-District Collector directed the 6th respondent-Tahsildar to evict the petitioner and her husband from the so-called puramboke in R.S.No.21/1. Against the order of the District Collector, Ext.P4 revision petitioner was filed by the petitioner's husband before the Board of Revenue. But in the meanwhile the 1st respondent-Panchayat claimed that the disputed property was handed over by the Revenue Authorities to the Panchayat under the provisions of the Kerala Panchayat Act. On being appraised of the grievances of the

petitioner, the Panchayat Executive Officer submitted Ext.P5 report dated 13.10.1971 before the Panchayat Board for decision. Considering Ext.P5 and after due deliberations, Ext.P6 resolution was adopted by the Panchayat Board to lease out the puramboke land in R.S.No.28/1 having extent of one acre and 45 cents in the possession of Dr.Salim for the period from 1968-69 to 1971-72 and to request the Government through the Director of Panchayat to allow permanent assignment of the same with effect from 1.4.1972. This decision was subject to the condition that the revision petition filed by Dr.Salim before the Board of Revenue is withdrawn by him. Pursuant to Ext.P6, Ext.P7 letter dated 14.12.1971 was issued to the petitioner's husband by the Executive Officer of the Panchayat requesting to withdraw the revision petition filed before the Board of Revenue. Accordingly, withdrawal application has filed and the Board of Revenue passed Ext.P8 order recording the circumstances under which the revision petition was sought to be withdrawn and dismissing the revision petition as withdrawn. Thereafter pursuant to a request from the 1st respondent-Panchayat the petitioner's husband filed application for lease of the land in the prescribed form remitting lease rent for three years at the rate of rupee one per cent per year. But the Executive Officer of the Panchayat did not forward the

resolution of the Panchayat requesting the Government to assign the property to the petitioner's husband. On coming to know about this, the President of the Panchayat requested the District Panchayat Officer by Ext.P9 letter dated 29.6.1972 to implement the decision of the Panchayat strictly as per the resolution. The petitioner's husband made a representation before the Inspector of Panchayats setting out his grievances about the inaction of the Executive Officer of the Panchayat. Thereafter the 1st respondent issued a notice to the deceased husband of the petitioner calling upon him to remit the lease rent for the period from 1972-73 to 1978-79. Ext.P10 is copy of that notice. The petitioner submits that though her husband was not liable to pay the amount since, the 6th respondent had agreed for permanent assignment of the land in favour of the petitioner's deceased husband with effect from 1.4.1972, the amount was remitted under protest in order to avoid further steps. Ext.P11 is copy of the reply sent by the petitioner's husband to Ext.P10. Thereafter also the petitioner's husband continued to remit the lease amount though the claim for permanent assignment was being pursued. Ext.P12 is the copy of the receipt against payment of lease amount for the year 1987-88. All along the petitioner, her husband and children continued in possession and enjoyment of the above

property. But on 19.4.1989 due to political and other reasons the Executive Officer of the Panchayat, the Village Officer, the Vice President of the Panchayat and a few others came over to the property and threatened that they will forcefully take possession of the property after demolishing the residential house and after destroying the other improvements. The enquiry revealed that the Panchayat has on 17.1.1989 taken a decision to resume the land from the possession of the petitioner. The petitioner approached this court and filed O.P.No.3721 of 1989. That O.P. was disposed of by this court with a direction that the petitioner will not be evicted from the disputed property other than by resorting to the provisions of the Land Conservancy Act. Subsequently the 6th respondent initiated proceedings and Ext.P13 is the copy of the written statement submitted by the petitioner. The 6th respondent without considering the objections of the petitioner passed Ext.P14 order directing eviction of the petitioner invoking Kerala Panchayats (Removal of Encroachment and Possession and Recovery of Penalities for Unauthorised Occupation) Rules, 1964. Against Ext.P14 order of the 6th respondent the petitioner preferred Ext.P15 appeal before the R.D.O. The R.D.O. disposed of the appeal by passing Ext.P16 order. The petitioner submits that Ext.P15 appeal was allowed in part to the

extent the R.D.O. directed that 45 cents of land as well as residential building of the petitioner shall not be evicted and the Panchayat was directed to take a fair decision regarding the assignment of 45 cents of land upon which the residential building is situated. The appeal however was dismissed regarding the balance extent of one acre. Against Ext.P16 the petitioner preferred Ext.P17 appeal before the District Collector who dismissed Ext.P17 appeal by Ext.P18 order dated 25.9.1996. Against Ext.P18 the petitioner approached this court filing O.P.No.16245 of 1996. This court disposed of the Original Petition directing the petitioner to file revision before the Board of Revenue. Accordingly, the petitioner submitted Ext.P19 revision before the Board of Revenue. The Board of Revenue dismissed Ext.P19 by its order dated 15.4.1997. Complaining that the order of the Board of Revenue was in violation of the principles of natural justice the petitioner filed O.P.No.7688 of 1997 before this court. This court set aside the order passed by the Board of Revenue and directed the third respondent-revisional authority to reconsider the matter. Ext.P20 is copy of the judgment of this court in O.P.No.7688 of 1997. The petitioner submits that the third respondent considered the revision petition correctly and passed Ext.P21 order after holding that the principles of promissory estoppel applied in the case and

that the petitioner was not liable to vacates. Against Ext.P21 order the first respondent-Panchayat approached this court by filing O.P.No.34548 of 2000. This court by judgment dated 21.10.2005 directed the Panchayat to approach the Government. The petitioner complains that the Panchayat did not serve copy of the revision petition filed by them before the Government to the petitioner. But the Government issued notice proposing to convene a meeting for hearing on 2.6.2006. On that day the petitioner entered appearance before the Government and submitted Ext.P22 argument notes. Ext.P23 is the copy of the order dated 20.9.2006 passed by the Additional Secretary to Government pursuant to the hearing. Ext.P24 produced is copy of the application for assignment submitted by the petitioner before the 6th respondent pursuant to the third respondent's directions. Impugning Ext.P23 on various grounds, the petitioner prays that Ext.P23 be quashed and the respondents be directed to dispose of Ext.P24 at the earliest.

3. The 1st respondent-Panchayat has filed a detailed counter affidavit. The claim of the petitioner that she is in possession of the property on the strength of Exts.P2 and P3 is refuted. It is contended that after obtaining ownership of the property actually covered by those two documents in 1966 the petitioner and her husband with

some motive forcibly and illegally occupied one acre and 45 cents of puramboke land belonging to the Government "which was later vested with the Panchayat for administrative purposes." Immediately on getting information regarding the trespass, the proceedings under reference VII 21778/67 were initiated and the District Collector found after a due enquiry that the petitioner and her husband had trespassed upon puramboke land extending to one acre and 45 cents and by the order dated 22.5.1968 ordered eviction. Though Dr.Salim filed a revision before the Board of Revenue against the District Collector's order, during the pendency of that, he and his wife, the petitioner approached the Panchayat with a request to allow them to continue in possession. The Panchayat decided to lease the property to the petitioner and her husband upto 1971-72 and also to request the Government to assign the property to the petitioner subject to the condition that the revision filed by Dr.Salim is withdrawn by him. Dr.Salim withdrew the revision. The Panchayat on receiving lease amount regulalrised the lease upto the year 1971-72 and as per Ext.P9 recommended for assignment through the Director of Panchayat. The claim of the petitioner and her husband that they have been regularly paying lease amount to the Panchayat is denied. It is pointed out that taking up the stand that they are not liable to be

treated as lessees and that they are entitled for purchase certificate, they were unwilling to pay lease amount though later they remitted amounts till 1987-88. While so the petitioner filed O.P.No.3721 of 1989 contending that she is being forcibly evicted unauthorisedly. The Original Petition was filed when steps were taken by the Panchayat for evicting the petitioner who had refused to seek renewal of lease after 1987-88. This court disposed of by that O.P. by Ext.R1 (A) judgment observing that the petitioner will not be evicted other than through the provisions of the Land Conservancy Act. It was pursuant to Ext.R1(A) that the Tahsildar passed Ext.P14 order directing the petitioner to surrender possession of the puramboke land trespassed upon. The plea of promissory estoppel raised by the petitioner is unsustainable since the property is admittedly puramboke land and this court in Ext.R1(A) judgment has made it clear that the petitioner can be evicted according to the provisions of the Land Conservancy Act. The land belongs to the Government and the Panchayat has no authority to assign the land to anybody. The Panchayat has not committed breach of any promise. The resolution of the Panchayat was that lease for three years will be given and request will be made to the Government for assignment. The Panchayat gave lease for more than three years and kept its promise

for requesting the Government for assignment. It is the Government which is not prepared to give assignment to the petitioner. The Government had not given any promise to the petitioner. The Government has sanctioned a primary health centre to the Panchayat which is decided to be accommodated on this puramboke land. The said decision cannot be implemented so far, due to the resistance of the petitioner and her husband. It is then pointed out that against the order passed by the District Collector exempting 45 cents in favour of the petitioner, the Panchayat had also filed a revision before the Board of Revenue. But that revision was never taken by the Board of Revenue. It is contended that even the grant of 45 cents to the petitioner is incorrect.

4. On behalf of the third respondent, the Deputy Collector (LR), Collectorate, Kozhikode has filed a detailed counter affidavit justifying Ext.P23. It is stated therein that while the revision petition was pending before the Board of Revenue against the order of the District Collector confirming the order of eviction of the petitioner the land was transferred to the 1st respondent on 22.9.1968 under the provisions of the Kerala Panchayats Act, 1960 and that the President of the Panchayat had even written to the Board of Revenue that the land in question is Panchayat land and therefore the Land

Conservancy Act is not applicable. It is stated that the Panchayat did pass a resolution in 1971 to lease out 1.45 acres of land in R.S.No.28/1 to the petitioner's husband for the three year period from 1968-69 to 1971-72 and request the Government to allow assignment with effect from 1.4.1972 on condition that the party withdrew the case filed before the Board of Revenue. It was accordingly that the Board of Revenue dropped all action on the revision petition filed by the petitioner's husband. But in 1982 the Panchayat passed another resolution that the land need not be assigned to the petitioner since the same may result in deduction of the Panchayat income and to lease out the land as in the previous years. Later on 17.1.1989 the Panchayat passed a third resolution to resume one acre of land out of 1.45 acres which is proposed to be transferred to the Government for the construction of Primary Health Centre. Thereafter the Panchayat initiated eviction proceedings against the petitioner and this court in O.P.No.3721 of 1989 ordered that the Panchayat cannot evict the petitioner and take possession of the property by force without resorting to the provisions under the Land Conservancy Act. The Tahsildar being the authority under the Land Conservancy Act initiated action under Section 12 of the Land Conservancy Act and passed eviction order on 1.4.1993. Against that

order the petitioner preferred appeal before the District Collector. That appeal was heard by the R.D.O. who disposed of the appeal directing the petitioner to vacate one acre of land from out of the total extent of 1.45 acres and permitting him to retain 45 cents upon which the residential building is situated and which contained improvements effected by them. Against the order of the R.D.O. the petitioner preferred revision petition before the District Collector who upheld the order of the R.D.O. against which as directed by this court in O.P.No.16243 of 1996 the petitioner preferred second revision petition before the Board of Revenue. The Board of Revenue dismissed that revision petition on 15.4.1997. That order was challenged by the petitioner before this court and this court under Ext.P20 judgment in O.P.No.7688 of 1997 directed the Commissioner of Land Revenue to consider the question of promissory estoppel and also the petitioner's claim for compensation for improvements. The Land Revenue Commissioner upheld the plea of promissory estoppel in favour of the petitioner. Against the order of the Land Revenue Commissioner, the Panchayat preferred O.P.No.34548 of 2000 before this court and this court issued certain directions to the Government and Ext.P23 order has been passed by the Government pursuant to those directions. The counter affidavit points out that the property

covered by Exts.P1 and P2 are in R.S.No.27/2B of Azhiyoor Village. But the puramboke land in respect of which eviction now ordered is in R.S.No.28/1. The petitioner and her husband are encroaches on that land. It was pursuant to the directions of this court through the judgment in O.P.No.3721/89 (Ext.R1(A)) that Ext.P23 order was ultimately passed by the Government. This court in that judgment has ruled that the Panchayat cannot evict the petitioner by force and that the petitioner is liable to be evicted only by resorting to the provisions contained under the Land Conservancy Act. Extreme benevolence has been shown by the Government in directing assignment of 45 cents from out of the total extent of 1.45 acres of land wrongfully possessed by the petitioner and her husband. There is no error in survey records. The only error has been on the part of the petitioner who possessed the Government puramboke land along with her private lands. Coming to the question of value of improvements, the Government contends that the land involved is puramboke land and the improvements made by the petitioner on puramboke land is illegal. The principle of promissory estoppel has no application at all. In fact it is considering the promise which was given to the petitioner's husband by the Panchayat, though the same was without authority and taking into account the fact that a portion of

the residential building remains put up on those 45 cents that the Government directed assignment of 45 cents. That the property in question is puramboke can never be disputed. Reference is made to Rule 7 of the Kerala Land Conservancy Rules and it is submitted that persons having annual family income of more than Rs.30,000/- are not eligible for getting assignment of puramboke land in the normal course. The Government in exercise of its powers to consider assignment of such cases under Rules 24 has passed orders to assign a portion of the land only with the objective of salvaging the portions of the petitioner's residential building. Survery number of the property has been verified and identified and it is found that the property is in survey No.28/1.

5. Mr.K.M.Firoz, Advocate addressed me very elaborately and persuasively on behalf of the petitioner. Mr.Firoz referred to various documents placed on record particularly Exts.P23, P1, P6, P9, P10, R1(A), P14, P6 and P20. He drew my attention to Sections 16(5) and 17(4) of the Land Conservancy Act and also to Section 65 of the Kerala Panchayats Act, 1960. Mr.Firoz would rely on the judgment of this court in **Ellakkal Service Co-operative Bank v. State of Kerala**(1997 (2) KLT 85) to submit that since powers conferred on, statutory authorities are expected to be discharged by they

themselves, this court will not be justified in deciding the question of promissory estoppel in this Writ Petition. The direction in Ext.P21 was that the question of promissory estoppel shall be decided by the Board of Revenue. The Government has not chosen to consider the question of promissory estoppel which was the relevant aspect. The Government Order is a cryptic one issued in violation of principles of natural justice. If the principles of promissory estoppel as explained by the Supreme Court in **Union of India v. Godfrey Philips India Ltd.** (AIR 1986 S.C. 806) are correctly applied, it will have to be found that the petitioner and her husband are not liable to be evicted from the property at all. The Government is not justified in saying that the property had never vested in the Panchayat and that the Panchayat would not have given any promise to assign the property to the petitioner. The stand of the Panchayat and the stand of the Revenue Authorities all along was that the property became vested in the Panchayat. They cannot be permitted to take contrary positions now and thereby wriggle out from the solemn promise given to the petitioner. On the basis of the promise the petitioner had withdrawn from the revision filed before the Board of Revenue and thereby suffered detriment.

6. The Additional Advocate General Mr.Venganoor

Chandrasekharan Nair would submit that there is no gainsaying that the property in question all along was Government Puramboke. The petitioner's claim that she has title to the property and that she came to have ownership and possession over the property by virtue of Exts.P1 and P2 cannot be accepted even for a moment. Schedules of Exts.P1 and P2 mentioned the extent and boundaries of the properties conveyed to the petitioner very clearly. The survey number of the property is very clearly mentioned as R.S.No.27/2B while the puramboke land which is now ordered to be recovered is in R.S.No.28/1. This puramboke never became vested in the Panchayat under the vesting provision of the Panchayats Act or under the Panchahat Raj Act. The property could not have statutorily vested in the Panchayat though it is true that for administration purposes the property was entrusted with the Panchayat and the Panchayat and the petitioner came to be under an impression that the property was vested under the Panchayat. But the property was all along Government property vested with the Government. The principle of promissory estoppel cannot operate against the Government because the Government has not given any promise to the petitioner. This court under Ext.R1(A) permitted and directed eviction under the provisions of the Land Conservancy Act. Ext.R1(A) judgment has

attained finality. The petitioner is not entitled now to contend that she is not liable to be evicted. Under Ext.P21 this court has certainly directed the Land Revenue Commissioner to consider the question of promissory estoppel and the Land Revenue Commissioner who finds that the principle of promissory estoppel applies. But against Ext.P21 order of the Land Revenue Commissioner the Panchayat preferred an appeal to the Government which was directed by this court to be considered by the Government and Ext.P23 is the result of such consideration. Though Ext.P23 does not in so many words refer to promissory estoppel, the Government has bestowed maximum equity on the petitioner by directing assignment of 45 cents of very valuable property to the petitioner.

7. Mr.K.Lakshminarayanan, Advocate made submissions on behalf of the 1st respondent-Panchayat. Learned counsel submitted that the principle of promissory estoppel cannot be applied against the Panchayat. The promise which was given by the Panchayat was only to lease out the land for three years and to request the Government for assignment. The land was leased out to the petitioner for more than three years and the Panchayat became constrained to initiate action for eviction when the petitioner is refused to pay lease amount on the ground that the Panchayat had

orally agreed to assign the land. There was no agreement by the Panchayat to assign the land to the petitioner since the land was puramboke lannd. The Panchayat could not have made the assignment. The Panchayat would have only requested the Government. The Government was requested. Thus the Panchayat kept both its promises. But the Government in its wisdom was not inclined to allow the request for assignment. The Government has now sanctioned a Primary Health Centre upon the disputed land. The disputed land is puramboke which is clear from the very applications for assignment submitted by the petitioner. The petitioner's case of having title to the property is inherently unsustainable. It is eminently in public interest that the Primary Health Centre be established on this property. The Government has bestowed unmerited benevolence upon the petitioner. In fact the Panchayat had preferred a revision petition against the order of the R.D.O. permitting the petitioner to retain possession of 45 cents which is now allowed by the Government also to be retained by the petitioner. The Board of Revenue did not pass any orders on the revision petition filed by the Panchayat.

8. I have anxiously considered the rival submissions addressed at the Bar in the light of the materials placed on record and the

various statutory provisions to which my attention was drawn by the learned counsel. It cannot be said that the submission of Mr.Firoz that Ext.P23 order of the Government does not even refer to the principle of promissory estoppel which was actually considered in favour of the petitioner by the Land Revenue Commissioner pursuant to Ext.P20 judgment, is wrong. It would have been ideal, if the Government had in Ext.P23 referred to that contention also and decided the same in the light of the reasons stated in the earlier orders passed by the District Collector (Ext.P18) and the R.D.O. (Ext.P16) and by assigning the reasons which are offered at the Bar by the Additional Advocate General and the counsel for the Panchayat. But the question before me is whether this court should in exercise of extra-ordinary jurisdiction for judicial review under Article 226 of the Constitution set aside Ext.P23 and remitting the matter back to the Government to enter findings on the question of promissory estoppel. Having regard to the elaborate submissions which were addressed before me and my survey of the entire materials available on record, I am of the view that it is not necessary. The petitioner's claim to title over the property in question which is also seen raised in the Writ Petition cannot be entertained even for a moment. The recitals in Exts.P1 and P2 including the property description are very clear and do not admit

of any ambiguity. The extent, survey numbers and boundaries are shown. It is not indicated at all that the petitioner is in possession of even an inch of land in excess of what is mentioned as conveyed. Thus the property which is now ordered to be resumed which is in a different survey number is undoubtedly puramboke. The plea of promissory estoppel is not available to the petitioner against the Government. The petitioner has no case that the Government had given any promise to the petitioner which was acted upon by the petitioner to her detriment. Perhaps it would appear from the pleadings of the Government in earlier cases that there was some admission on the part of the revenue authorities that the property was transferred to the Panchayat. It is common ground that there is no transfer at all by means of any document. Transfer if at all would have been only by statutory vesting. Having regard to the nature of the property the puramboke in question could not have vested in the Panchayat at all. I am therefore inclined to accept the version of the Additional Advocate General that the property was only entrusted with the Panchayat for administration purposes and perhaps the Panchayat and the petitioner came to be under a wrong impression that the property was Panchayat land.

9. Ext.R1(A) judgment was delivered by this court on a Writ

Petition filed by the petitioner. The prominent ground of the petitioner himself was that he is liable to be evicted only in accordance with the provisions of the Land Conservancy Act and that the Panchayat is not entitled to evict her. The above ground was accepted by this court and Ext.R1(A) has attained finality. I do not know how the petitioner can now contend that the property belonged to the Panchayat absolutely at any point of time. There certainly was a promise by the Panchayat. But the promise was only that the Panchayat will lease out the property to the petitioner for a period of three years and would request the Government to assign the property to the petitioner. As rightly submitted by Mr.Lakshminarayanan the Panchayat complied with those promises. Lease was given for more than three years and the Government was requested to assign the land. But the Government was not inclined to accept the request. It should be noticed that the action for evicting the petitioner from the property commenced way back in 1968 and that the petitioner and her husband came to have ownership under adjacent property under Exts.P1 and P2 only in 1966. Thus the case of the Panchayat and the Government that the petitioner and her husband encroached upon puramboke land lying adjacent to their own lands is highly probable. The question is whether such persons are entitled for equity. Of

course under Ext.P20 judgment this court directed the Land Revenue Commissioner to consider the question of promissory estoppel. But this court never directed the Commissioner to grant equitable relief based on promissory estoppel principle in respect of the entire extent of 1.45 acres wrongfully possessed by the petitioner. The District Collector under Ext.P18 and the Government under the impugned order has directed assignment of 45 cents of land which takes in portions of the residential building put up by the petitioner in 1968 or so (immediately after the trespass). The above directions have been given obviously on equitable considerations and perhaps considering that everybody at some point of time was under the impression that the property belonged to the Panchayat.

10. Even though ground has been raised by the writ petitioner that there are valuable improvements in the area now ordered to be resumed, there is no material placed on record to show that there are any improvements over the said area. Improvements if at all were effected on the 45 cents which is now ordered to be assigned to the petitioner. I do not think that this court will be justified in interfering with Ext.P23 invoking the extra-ordinary jurisdiction under Article 226 upholding the technical contention that the Government has not considered the question of promissory estoppel. Even beyond the

extent permissible, all equities have been considered and conferred on the petitioner. The challenge against Ext.P23 fails.

11. The result of the above discussion is that the Writ Petition fails. Ext.P23 is upheld. However there will be a direction that regarding realisation of the market value of 45 cents of puramboke land permitted to be retained by the petitioner under Ext.P23, the respondents will determine the market value as on 11.2.1972 the date on which the revision petition filed by the petitioner's husband was dismissed by the Board of Revenue as withdrawn provided the petitioner files an affidavit before this court within two weeks of getting copy of this judgment undertaking to surrender the land within another two weeks thereafter without raising any further claims on account of value of improvements or otherwise. It is also clarified that the petitioner will be liable to pay the market value for the land only and not for the building or building portions standing on the aforesaid 45 cents.

The Writ Petition will stand dismissed subject to the above observations, but in the circumstances, without any order as to costs.

srd **PIUS C.KURIAKOSE, JUDGE**